

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

BIG LOTS, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-11967 (JKS)

Jointly Administered

Re: Docket No. 3166

Hearing Date: October 9, 2025 at 10:00 a.m. (ET)

Obj. Deadline: October 2, 2025 at 4:00 p.m. (ET)
(Extended for U.S. Trustee to October 6, 2025)

**UNITED STATES TRUSTEE’S OBJECTION TO THE JOINT MOTION OF THE
DEBTORS AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO
APPROVE ENTRY INTO SETTLEMENT AGREEMENT WITH CERTAIN OFFICERS
AND DIRECTORS OF THE DEBTORS PURSUANT TO 11 U.S.C §105(A) AND
FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019**

Andrew R. Vara, the United States Trustee for Regions Three and Nine (the “U.S. Trustee”), through his undersigned counsel, hereby objects (this “Objection”) to the *Joint Motion of the Debtors and the Official Committee of Unsecured Creditors to Approve Entry into Settlement Agreement with Certain Officers and Directors of the Debtors Pursuant to 11 U.S.C. §105(a) and Federal Rule of Bankruptcy Procedure 9019* [D.I. 3166] (the “Settlement Motion”), and in support of this Objection respectfully states:

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective employer identification numbers, are as follows: Great Basin, LLC (6158); Big Lots, Inc. (9097); Big Lots Management, LLC (7948); Consolidated Property Holdings, LLC (0984); Broyhill LLC (7868); Big Lots Stores - PNS, LLC (5262); Big Lots Stores, LLC (6811); BLBO Tenant, LLC (0552); Big Lots Stores - CSR, LLC (6182); CSC Distribution LLC (8785); Closeout Distribution, LLC (0309); Durant DC, LLC (2033); AVDC, LLC (3400); GAFDC LLC (8673); PAFDC LLC (2377); WAFDC, LLC (6163); INFDC, LLC (2820); Big Lots eCommerce LLC (9612); and Big Lots F&S, LLC (3277). The address of the debtors’ corporate headquarters is 4900 E. Dublin-Granville Road, Columbus, OH 43081.

PRELIMINARY STATEMENT

The Settlement Motion proposes to settle certain potential D&O claims against 14 current and former officers and directors of the Debtors for a cash payment of \$6.5 million. This, in and of itself, is not objectionable. But the Debtors and the Committee have also included a wholly inappropriate gatekeeping provision in the proposed settlement order. Unless this objectionable provision is removed, the Court should not approve the proposed settlement.

JURISDICTION AND STANDING

1. This Court has jurisdiction to hear and determine the Settlement Motion and this Objection under: (i) 28 U.S.C. § 1334; (ii) applicable order(s) of the United States District Court of the District of Delaware issued under 28 U.S.C. § 157(a); and (iii) 28 U.S.C. § 157(b)(2).

2. Under 28 U.S.C. § 586, the U.S. Trustee is charged with overseeing the administration of chapter 11 cases filed in this judicial district. This duty is part of the U.S. Trustee's overarching responsibility to enforce the bankruptcy laws as written by Congress and interpreted by the Courts. *See Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6th Cir. 1990) (describing the U.S. Trustee as a "watchdog").

3. The U.S. Trustee has standing to be heard on the Settlement Motion under 11 U.S.C. § 307. *See United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.)*, 33 F.3d 294, 295-96 (3d Cir. 1994) (noting that U.S. Trustee has "public interest standing" under 11 U.S.C. § 307, which goes beyond mere pecuniary interest).

BACKGROUND

A. The Chapter 11 Cases

4. On September 9, 2024 (the “Petition Date”), each of the above-referenced debtors (the “Debtors”) filed a voluntary chapter 11 petition for relief in the United States Bankruptcy Court for the District of Delaware. The Debtors remain in possession of their property and continue to manage their assets as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Chapter 11 Cases, which are being jointly administered for procedural purposes only.

5. On September 23, 2024, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed an Official Committee of Unsecured Creditors (the “Committee”).

6. At a hearing on December 31, 2024, the Debtors received Court approval to consummate a sale (the “GBRP Sale”) of substantially all of their assets to Gordon Brothers Retail Partners, LLC (“GBRP”). On January 2, 2025, the Court entered the *Order (I) Approving the Asset Purchase Agreement, (II) Authorizing and Approving the Sale of Certain of the Debtors’ Assets Free and Clear of all Claims, Liens, Rights, Interests, Encumbrances, and Other Assumed Liabilities and Permitted Encumbrances, (III) Authorizing and Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* [D.I. 1556] (the “GBRP Sale Order”). On January 3, 2025, the parties consummated the GBRP Sale.

7. In order to obtain the Committee’s support for the GBRP Sale, the Debtors and GBRP agreed to carve out both (a) all potential claims and causes of action held by the Debtors’ estates against all current and former directors and officers of the Debtors and (b) the proceeds from any of the Debtors’ D&O insurance policies (collectively, the “D&O Assets”) from the sale

of substantially all of their assets to GBRP. The D&O Assets, thus, constitute some of the few non-cash assets remaining in the Debtors' estates.

8. Since its appointment, the Committee has been investigating the D&O assets, including by hiring counsel to conduct an independent investigation, engaging in multiple rounds of discovery and document review, deposing multiple witnesses, drafting a demand letter and proposed complaint, and exchanging several settlement proposals with the 14 current and former officers and directors (the "Settling D&Os").

9. On September 17, 2025, the Debtors, the Committee, and the Settling D&Os executed a settlement agreement. Under its terms, the Debtors' former D&O insurer will pay the Debtors' estates \$6.5 million in exchange for mutual releases by the Debtors and the Committee of the D&Os and the D&O insurer, among others.

10. On September 18, 2025, the Debtors filed the Settlement Motion, along with a proposed order. The Settlement Motion stated that "The Parties agree to include a 'gatekeeper' provision in the Proposed Order that shall provide that, upon entry of the Proposed Order, no Enjoined Party may commence or pursue a D&O Claim without the Court (i) first determining, after notice and a hearing, that such D&O Claim represents a Claim of any kind that is not released pursuant to paragraph 6(a) or 6(c) of the Settlement Agreement, and (ii) specifically authorizing such Enjoined Party to bring such Claim or Cause of Action against one or more of the D&O Released Parties." Settlement Motion, ¶20(g).

11. The Settlement Motion contained no other discussion of the proposed "gatekeeper provision," and failed to include any factual, evidentiary, or legal basis for it.

12. The proposed "gatekeeper provision" in paragraph 7 of the proposed order (the "Gatekeeper Provision") approving the settlement provides:

Gatekeeper. Upon entry of this Order, no Enjoined Party may commence or pursue a D&O Claim without the Court (i) first determining, after notice and a hearing, that such D&O Claim represents a Claim of any kind that is not released pursuant to this Order or paragraph 6(a) or 6(c) of the Settlement Agreement, and (ii) specifically authorizing such Enjoined Party to bring such Claim or Cause of Action against one or more of the D&O Released Parties.

13. “Enjoined Party” is defined in paragraph 6 of the proposed order as “all persons and entities.”

OBJECTION

14. The Gatekeeper Provision forces non-debtors who wish to pursue claims against other non-debtors to first come to this Court—and only this Court—for a determination of whether their claim is “a kind that is not released pursuant to this Order or paragraph 6(a) or 6(c)” of the parties’ settlement agreement. The provision has no time limit, and so the Gatekeeper Provision would apply even after the debtors’ bankruptcy cases have been closed, thereby requiring the non-debtor seeking to pursue a claim against another non-debtor to first move to reopen them.

15. The proposed procedure is akin to the procedure described in *Barton v. Barbour*, 104 U.S. 126 (1881) prior to suing a bankruptcy trustee, and the Court should not approve it. The defense of “release” is an affirmative defense to a cause of action asserted in a court of law or other tribunal. Affirmative defenses cannot be adjudicated prior to the filing of the action to which such defense relates. Moreover, as to claims between non-debtors, there is no reason why the court in which the relevant action has been filed cannot make the determination as to whether the claim was released under the parties’ settlement.

16. In the context of plan confirmation, Judge Owens rejected a similar provision in *In re Gulf Coast Health Care, LLC*, et al., Case No. 21-11336, wherein she noted that “the plan says what it says and other courts should be entitled to exercise their authority to interpret it.”

See Ex. A, May 4, 2022 Hearing Transcript at 30:16-23. Further, “imposing such a requirement could also impose an unnecessary administrative hurdle and cost the parties when these cases are closed.” See *id.*

17. In connection with confirmation in the AIO, Inc. chapter 11 cases (*In re AIO, Inc., et al.*, Case No. 24-11836), Judge Goldblatt was asked to enter a confirmation order that contained a broad gatekeeper provision over the objection of the U.S. Trustee. When asked whether such a provision had ever been approved before, the only instance counsel could point to was Judge Goldblatt’s own prior order authorizing a settlement between the AIO debtors and their former parent company.

18. In his August 21, 2025 opinion regarding confirmation in AIO, Judge Goldblatt discussed the proposed gatekeeping provision in the plan as well as his prior approval of that type of provision in the settlement order. Judge Goldblatt held:

Even as narrowed [by *In re Highland Capital Mgmt., L.P.*, 132 F.4th 353 (5th Cir. 2025)] however, this Court does not believe there is a basis for imposing a “gatekeeping” role. To be sure, it is settled law that estate fiduciaries may be exculpated from the assertion of claims that arise out of their exercise of their fiduciary duties. And it is customary and unobjectionable to back that exculpation by an injunction against the assertion of an exculpated claim. The Court does not understand the authority, however, for extending the injunction past the scope of the exculpation and other appropriate releases of estate claims themselves, to apply to claims that “could reasonably be characterized” as such a claim. More puzzling still, the “gatekeeping” injunction arrogates to this Court not only the authority to determine whether such a claim falls within the plan’s injunction but also requires a finding by this Court that the underlying claim (over which the Court may or may not have subject-matter jurisdiction) is a “colorable” claim on the merits.

Notwithstanding *Highland Capital* and the related Fifth Circuit authority (or the transcripts from oral rulings of bankruptcy courts in other jurisdictions), this Court does not believe that either the Bankruptcy Code or the *Barton* doctrine provides any substantive authority for the bankruptcy court to do anything like this. The parties have not identified any Third Circuit authority for such an injunction, and this Court is aware of none.

* * *

Finally, however, notwithstanding the prior point, the Court now believes that the approach taken by the court in *Gulf Coast Health Care* is the better one. To be sure, this Court retains jurisdiction to resolve a dispute about the meaning of its order. And if a dispute were to arise in the future about whether a claim asserted in another court were actually enjoined by virtue of this Court's confirmation order, this Court would undoubtedly be willing to address the matter through a declaratory judgment action, rather than requiring another court to guess as to the meaning of this Court's order. That said, and despite the Court having done so in the settlement order in this case, the Court now believes that the better view is that it ought not assert *exclusive* jurisdiction over that issue. As the court said in *Gulf Coast Health Care*, to the extent another court were otherwise inclined to resolve a dispute over the meaning of this Court's order, the Court does not believe that it can or should enter an injunction that should preclude that.

The settlement order, of course, is now a final and non-appealable order. It says what it says, and the Court stands prepared to enforce it. With the benefit of hindsight, however, this Court does not believe that the entry of such a gatekeeping provision is authorized by law.

19. The same concerns apply in this case. There is no basis for the Gatekeeper Provision and the Court should not approve the proposed settlement unless the Debtors remove it.

RESERVATION OF RIGHTS

20. The U.S. Trustee leaves the Debtors to their burden of proof and reserves any and all rights, remedies and obligations to, among other things: (i) complement, supplement, augment, alter or modify this Objection; (ii) assert any objection; (iii) file any appropriate motion; (iv) conduct any and all discovery as may be deemed necessary or as may be required; and (v) assert such other grounds as may become apparent upon further factual discovery.

WHEREFORE, the U.S. Trustee respectfully requests that the Court enter an order: (i) denying approval of the Settlement Motion; and (ii) granting such other and further relief as the Court deems just and equitable.

Dated: October 3, 2025

Respectfully submitted,

ANDREW R. VARA
UNITED STATES TRUSTEE
REGIONS 3 AND 9

By: /s/ Hannah J. McCollum

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EXHIBIT A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
GULF COAST HEALTH CARE, LLC, Case No. 21-11336 (KBO)
et al, 824 Market Street
Debtors. Wilmington, Delaware 19801
Wednesday, May 4, 2022

TRANSCRIPT OF VIDEO HEARING RE:
CONFIRMATION - COURT DECISION
BEFORE THE HONORABLE KAREN B. OWENS
UNITED STATES BANKRUPTCY JUDGE

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COURT DECISION

7

1 (Proceedings commence at 3:30 p.m.)

2 THE COURT: Good morning, everyone. This is Judge
3 Owens. This is the time that we are gathered to hear the
4 ruling in Gulf Coast.

5 Before I begin, I guess I ask the parties: Is
6 there anything we need to take care of ahead of time?

7 THE COURT: Okay.

8 UNIDENTIFIED: Nothing from the debtors, Your
9 Honor.

10 THE COURT: Okay. Great.

11 Okay. As I mentioned, we're here on the Court's
12 ruling on confirmation of the debtors' plan, as modified,
13 found at Docket Number 1217.

14 The confirmation proceedings lasted four days; and,
15 during such time, the Court heard credible and competent
16 testimony from Mr. Jones, the debtors' Chief Restructuring
17 Officer, as well as Mr. Vogel, the debtor's independent
18 manager; Mr. Chermayeff, a representative of Barrow Street
19 Capital, and Ms. Kjontvedt, on behalf of Epiq, the debtors'
20 administrative advisor, assisting the debtors with, among
21 other things, tabulating the votes cast on the plan.

22 In addition, approximately 91 exhibits were
23 admitted into the record by the parties and considered by the
24 Court.

25 And finally, there was voluminous briefing on the

1 contested confirmation issues filed by interested parties and
2 extensive argument was had.

3 The plan embodies a settlement between the debtors
4 and their key stakeholders; namely, the committee, Omega, and
5 certain affiliates and insiders known as the "contribution
6 parties, that was reached following the parties' voluntary
7 agreement to mediate with former Judge Peck. It provides for
8 an aggregate guaranteed minimum recovery of at least \$10
9 million to holders of general unsecured claims in Class 7.A
10 and litigation claimants, mostly PLGL plaintiffs, in Class
11 7.B.

12 Following further discussions among the parties
13 during the confirmation proceedings, the minimum guarantee
14 was increased to 11.5 million, with the additional 11 point -
15 excuse me -- with the additional 1.5 million earmarked for
16 Class 7.B, to ensure equality of distribution among that
17 subclass following the assumption of several settlement
18 agreements.

19 Additional future amounts may flow to the estates
20 for distributions for unsecured creditors following the
21 liquidation of certain business interruption and D&O
22 insurance policies.

23 Mr. Jones testified that, as a result of the
24 guaranteed funds, claim waivers, and redirection of proceeds
25 agreed to by Omega and the contribution parties, allowed

1 claims of creditors in Class 7.A are projected to receive a
2 recovery of approximately 19 percent, with those in 7.B to
3 receive approximately 21 percent.

4 Mr. Jones further explained that these projected
5 recoveries for unsecured creditors would not be available
6 absent the voluntary contributions of Omega and the
7 contribution parties.

8 Specifically, New Ark, the service providers, and
9 the equity sponsors, collectively known as the "contribution
10 parties," have agreed to contribute 14.75 million in cash to
11 fund a certain amount of allowed professional fee claims and
12 the guaranteed minimum to unsecured creditors.

13 New Ark has also agreed to redirect any recoveries
14 that it is to receive on account of its Section 507(b)
15 priority claim arising from the debtors' use of its cash
16 collateral during the Chapter 11 cases, as well as certain
17 recoveries it's to receive on account of its secured pre-
18 petition claim.

19 Moreover, the service providers agree to waive
20 recoveries on account of their pre-petition claims.

21 Omega has agreed to 1 million for allowed
22 professional fee claims and up to 1 million of business
23 interruption insurance proceeds, if obtained, for the
24 unsecured creditors. It has also agreed to waive repayment
25 of its DIP financing claim and redirect any recoveries that

1 it's to receive on account of pre- and post-petition claims
2 for the benefit of the unsecured claimants.

3 In toto, the debtors estimate that Omega and the
4 contribution parties have contributed to the plan up to 16.7
5 million of new money, a waiver of approximately 48 million of
6 post-petition DIP, administrative, and priority claims that
7 arose when all the parties knew they would never be repaid,
8 and a waiver or redirection of 124 million of pre-petition
9 claims.

10 Without the agreements to redirect proceeds and
11 waive claims, the debtors' current Class 7 unsecured
12 creditors would be substantially diluted and would only share
13 in approximately 31 percent of the funds available to
14 unsecured creditors in a non-consensual Chapter 11 scenario.
15 Under the current plan, they receive a 100 percent of the
16 guaranteed amount.

17 The unrebutted evidence also indicates that the
18 debtors have little to no available assets with which to fund
19 a plan or a Chapter 7 liquidation, save for potential causes
20 of action stemming from certain insider or affiliate
21 transactions with some of the contribution parties. As a
22 result of the limited assets and significant amount of claims
23 projected to be allowed against the estates, Mr. Jones
24 testified that the debtors would need to obtain somewhere
25 north of 175 million in litigation proceeds on those causes

1 of action to guarantee the plan's projected minimum recovery
2 to unsecured creditors; 75 million would need to be obtained
3 just to permit any recovery to unsecured creditors in a
4 Chapter 7 scenario.

5 The need for and benefits of the current plan
6 settlement is explained and supported by, among other things,
7 the hypothetical Chapter 7 waterfalls prepared by Mr. Jones
8 and his team as material information was garnered. Those are
9 found at Debtor Exhibits 19 and 20. The waterfall and the
10 assumptions underlying it have not been meaningfully
11 challenged.

12 In return for and as a condition to their plan
13 contributions, Omega and the contribution parties have
14 demanded releases for themselves and certain related parties
15 from the debtors, as well as non-consensual releases from the
16 litigation creditors in Class 7.B.

17 Also included in the plan's definition of "third-
18 party released parties" are all the PLGL codefendants and
19 their related parties, which would capture certain former
20 debtor employees and current and former officers. Pursuant
21 to the plan, creditors who vote in favor of the plan are also
22 giving a release of third-party released parties, but that
23 release is consensual.

24 The plan termsheet found at Debtors' Exhibit 17,
25 executed by the debtors, the creditors' committee, Omega, and

1 the contribution parties, following their successful
2 mediation, memorializes the parties' terms, including the
3 demand for and requirement of the plan's non-consensual
4 third-party releases.

5 The Court also heard testimony from Mr. Chermayeff
6 as to why Barrow Street wants the releases for itself and its
7 related parties, and why it conditions its plan contributions
8 on their inclusion in the plan; namely, they wish to buy
9 peace and finality, a position the debtors' representatives
10 believe New Ark, the service providers, and all of their
11 related parties take, as well.

12 In agreeing to the releases, Mr. Vogel, the
13 debtors' independent manager, with the sole authority to
14 pursue, settle, and release the debtors' causes of action,
15 testified credibly that he believed that it was in the best
16 interests of the debtors' estates, fair and reasonable to do
17 so because the releases are a necessary inducement for the
18 plan contributions of Omega and the contribution parties,
19 without which the current plan could not be proposed, and
20 without which unsecured creditors would receive no
21 distribution.

22 Supporting that conclusion was Mr. Vogel's
23 understanding of the nature and value of the debtors' assets
24 available to fund creditor recoveries; namely, the affiliate
25 and insider causes of action and the amount and priority of

1 claims, as set forth in Mr. Jones' waterfall scenarios.

2 To gain an understanding of the affiliate and
3 insider causes of action, Mr. Vogel led and controlled an
4 investigation into the estate's causes of action related to
5 the affiliate and insider transactions. The investigation
6 was independent, sufficient in scope, and conducted by able
7 and experienced professionals. No real challenge has been
8 made to these conclusions. The investigation yielded a
9 report that concluded that, at best, the causes of action
10 would yield approximately 64.3 million for the estates.

11 While the objecting parties attempted to discredit
12 some of the conclusions in the investigation report,
13 including the ultimate recovery conclusions, they neither
14 shared with the Court the results of their own investigation,
15 if one was undertaken, nor offered their own valuation
16 conclusions and analysis.

17 Moreover, their targeted challenges to the report
18 failed to seriously impact the material conclusion reached by
19 Mr. Vogel that led to his decision to enter into the plan
20 settlement, that the plan's guaranteed distribution to
21 unsecured creditors resulting from the contributions of the
22 released parties will likely yield far better recoveries to
23 creditors than those that could be achieved absent the plan
24 settlement.

25 Again, the waterfall indicates that 175 million of

1 litigation proceeds, approximately 2.8 times more than the
2 debtors' high value estimate, would need to be obtained to
3 yield the same result as the plan. And even if there was
4 credible evidence that 175 million could be obtained in
5 litigation, which there isn't, the Court cannot discount the
6 risk of that litigation, the likelihood of recovery against
7 the defendants, and the time value of money, all additional
8 considerations of Mr. Vogel in reaching his decision to
9 approve the plan settlement on behalf of the debtors.

10 Mr. Jones also offered his support for the plan for
11 the same reasons as Mr. Vogel. Moreover, in support of the
12 plan, the committee filed a statement, representing that it
13 conducted its own investigation into potential estate claims
14 and causes of action, including those that may exist against
15 the contributing parties. Like Mr. Vogel, the committee used
16 the results of this investigation, as well as Mr. Jones'
17 waterfall, to negotiate with the Omega -- with Omega and the
18 contribution parties, and agreed to the proposed plan.

19 For similar reasons as the debtors, the committee
20 concluded that the settlement and its guarantee to unsecured
21 creditors is the best possible outcome for creditors under
22 the circumstances.

23 With respect to the six voting classes of impaired
24 claims, all but Class 7.B, the litigation claimants, and
25 those subject to the non-consensual third-party releases

1 voted to accept the plan.

2 While the debtors maintain that Class 7.B accepted
3 the plan, I find that the second ballot cast by Millenia
4 after the voting deadline, which tilted the subclass' vote in
5 favor of the plan, was inappropriately accepted by the
6 debtors, pursuant to the disclosure statement order.
7 Millenia cast its first ballot, which rejected the plan,
8 shortly before the voting deadline. It has been asserted,
9 but not proven, that Millenia then realized that it submitted
10 its ballot in error as rejecting, when it really wished to
11 accept. Millenia then sent a second ballot, this time
12 accepting, within two hours after the voting deadline.

13 The debtors agreed to, quote, "waive" the voting
14 deadline and accept that second ballot. Ms. Kjontvedt
15 testified that there were no defects or irregularities with
16 respect to Millenia's first ballot, but that she accepted the
17 late-filed second ballot after consulting the debtors and
18 reviewing Paragraph 28 of the disclosure statement order.

19 Regardless of Ms. Kjontvedt's belief that accepting
20 Millenia's ballot was appropriate, the terms of the
21 disclosure statement order do not allow its acceptance. The
22 parties' arguments on this topic were confined to the
23 application of Paragraphs 22 and 28 through 30 of the
24 disclosure statement order.

25 The facts of the Millenia changed vote do not fit

1 into the circumstances described in Paragraphs 29 or 30 of
2 the order because Millenia's vote was not withdrawn, which is
3 Paragraph 29, and the second ballot changing Millenia's vote
4 was not cast before the voting deadline, and there's no
5 evidence suggesting that the voting deadline was extended for
6 Millenia, let alone prior to its expiration, which would
7 cover Paragraphs 22 and 30.

8 Moreover, Paragraph 28 does not apply because Ms.
9 Kjontvedt testified in her capacity as a professional, with
10 extensive experience with vote tabulation, that the original
11 Millenia ballot did not contain any defects or irregularities
12 for the debtors to waive.

13 Accordingly, with Millenia's accepted vote removed,
14 54 Class 7.B creditors voted to reject the plan and 53 voted
15 to accept, resulting in a 50.74 rejecting percentage.

16 Fifty-two of the fifty-four rejecting creditors
17 filed objections to the plan that were still extant at the
18 closing of the confirmation proceedings.

19 In addition, the Office of the United States
20 Trustee objected to confirmation of the plan.

21 All objecting parties object to the inclusion of
22 the non-consensual third-party releases, with the litigation
23 creditors focusing mainly on those to be granted in favor of
24 the insider affiliate contribution parties.

25 In addition, the litigation creditors object to the

1 debtors' release of those parties, the plan's Class 7
2 subclassification of unsecured creditors, the debtors'
3 allocation of the settlement proceeds between the subclasses,
4 the debtors' best interests test analysis, the good faith of
5 the debtors in proposing the plan, the proposed litigation
6 claims procedures, and the original identity of the
7 litigation claimants trustee. Excuse me.

8 In addition to the inclusion of the non-consensual
9 third-party releases, the U.S. Trustee also raised limited
10 objections to a number of specific plan provisions. All but
11 one of those were consensually resolved by the parties
12 following the close of the confirmation proceedings.

13 After considering the evidence and legal position
14 of the parties, I have determined that the debtors have not
15 met their burden necessary to confirm the plan with non-
16 consensual third-party releases. My decision was not easily
17 reached, but it is one that the law requires.

18 The contributions of Omega and the contribution
19 parties, either on behalf of themselves or other related
20 release parties, are substantial, and have enabled a recovery
21 to unsecured creditors when one otherwise would not exist,
22 and those enabling contributions are conditioned on the grant
23 of releases embodied in the plan.

24 The evidence presented was also sufficient to show
25 that the settlement embodied in the plan was achieved during

1 arm's length, good faith negotiations among the debtors, the
2 committee, Omega, and the contribution parties, and that the
3 debtors' decision to enter into the settlement was the result
4 of reasonable and appropriate business judgment, based on an
5 independent, full and fair investigation into the settled
6 debtor claims and appropriate waterfall analysis, which was
7 updated regularly as material information came to light, and
8 the consideration of other relevant facts and circumstances
9 that support a firm settlement with the litigation targets
10 today.

11 However, while those conclusions lend support for
12 the Court's approval of the debtors' releases of their claims
13 against the nondebtors, they cannot, by themselves, support
14 approval of the non-consensual third-party releases.

15 These types of releases are not broadly sanctioned.
16 They require satisfaction of, quote, "exacting standards" set
17 forth by the Third Circuit in Continental. Those standards
18 require that the Court conclude, based on specific supportive
19 factual findings, that the non-consensual third-party
20 releases are not only necessary to the success of the
21 debtors' reorganization, but also fair to the releasing
22 creditors and given to them in exchange for reasonable
23 consideration. Here, critical factors that courts in this
24 circuit traditionally rely on to conclude that a plan's
25 inclusion of non-consensual third-party releases is

1 appropriate are missing.

2 At the outset, I'll note that, while the parties
3 did not focus their presentations on the propriety of the
4 third-party releases granted to Omega, the D&Os, and the
5 employees, many or all of the factors that I will discuss
6 with respect to the contribution parties are also missing
7 with respect to the other released parties.

8 For instance, Omega is making a substantial
9 contribution to the plan, but nothing else in the record
10 supports the receipt of non-consensual third-party releases.
11 There is no record supporting the third-party release of the
12 debtors' former employees. And debtors admit that all
13 parties are willing to remove them and continue with the
14 proposed plan. While the D&Os may meet some of the criteria
15 necessary to justify their inclusion as non-consensual
16 released parties, such as identity of interest, no evidence
17 was introduced in support.

18 So, with respect to the contribution parties,
19 first, the debtors do not share an indication of interest
20 with the released parties.

21 Moreover, the debtors did not file these cases due
22 to the PLGL litigation sought to be permanently enjoined.
23 There is no evidence suggesting that the PLGL codefendants
24 and any other relevant released party will be unable to
25 defend themselves in that litigation, unable to satisfy

1 judgments against them if obtained, or could look to the
2 debtors' estates for indemnification, contribution, or the
3 like. The only justification for the release is the desire
4 by the contribution parties to achieve peace and finality in
5 exchange for their contributions to the plan. While I
6 appreciate and understand that desire, it is not a sufficient
7 basis to justify a release of the third-party claims, given
8 the totality of the circumstances.

9 Moreover, while the debtors cite to cases for the
10 proposition that parties may share an indication of interest
11 simply by possessing a common goal of confirming a plan and
12 consummating the transactions embodied therein, those cases
13 are a slim minority and I disagree with them. If that were
14 the indication of interest test, every plan in which a debtor
15 advocates for the inclusion of non-consensual releases on
16 behalf of a third party could satisfy the test. Moreover,
17 I'm puzzled as to the relevancy of a shared common goal to
18 Continental's required questions of necessity and fairness.

19 Additionally, and perhaps more critically, the
20 affected PLGL plaintiffs in Class 7.B have not overwhelming
21 voted to accept the settlement and release of their claims as
22 embodied in the plan. As courts have acknowledged, this is
23 often the best evidence of fairness of a plan's third-party
24 release to releasing parties.

25 Support is commonly garnered through negotiation

1 with the affected creditors or a representative body. But
2 here, the litigation creditors had no voice in the plan
3 settlement process or the allocation of the contributed
4 funds, either directly or through a seat on the committee.

5 Moreover, while their projected recovery under the
6 plan is more than what they would be entitled to a Chapter 7,
7 the releasing creditors are receiving nowhere close to
8 payment in full. And at worst, the evidence suggests that
9 Class B -- 7.B creditors are not receiving anything on
10 account of the released claims against the third parties by
11 the released parties. Rather, the evidence suggests that the
12 contributions made by the contribution parties were made on
13 account of the estate's viable causes of action against them.

14 Indeed, no separate analysis was performed by the
15 debtors or the committee as to the value of the third-party
16 released claims at the time the settlement was achieved. And
17 as will be explained, the debtors, with the support of the
18 all trade committee, worked to allocate the guaranteed
19 amount, so that creditors in Class 7.A, with likely no
20 pending third-party claims, and those in in 7.B with third-
21 party claims, would receive the same or close to the same pro
22 rata distribution of the plan's guaranteed funds. No other
23 evidence has been provided by the debtors to suggest a
24 valuation of the third-party PLGL claims or to explain how
25 any of the guaranteed amount to be distributed under the plan

1 is on account of those claims.

2 The debtors argue that the third-party claims
3 against the contribution parties are derivative in nature
4 and, thus, are to be released under the release the estates
5 are granting to the contributing parties. As such, they
6 argue that the third-party claims have *de minimis* value and
7 should not be entitled to disturb plan settlement.

8 The direct derivative issue is complex, not
9 appropriately and fully briefed, and concurrent -- and
10 currently is undecided. The creditors vigorously dispute the
11 debtors' positions from a legal standpoint and also highlight
12 the debtors' own earlier attempt during these cases to extend
13 the stay to the PLGL lawsuits as not estate claims and the
14 debtors' pre-petition history of sharing the defense of the
15 PLGL lawsuits in State Court with the relevant contribution
16 party codefendants. These facts certainly confuse the issue
17 even further.

18 As made clear by the Circuit in Continental, third-
19 party releasing creditors must receive consideration on
20 account of the third-party released claims they are forced to
21 give up under a debtor's plan, and it is insufficient for
22 them to receive as consideration only a distribution on
23 account of their claims against the debtor.

24 It is the debtors' burden to establish necessity
25 and fairness, and they have not done so here. As explained

1 by the Third Circuit in its Millennium Lab decision, in
2 rendering a decision on a request to include non-consensual
3 third-party releases in a plan, I must exercise caution and
4 diligence and am obligated to approach their inclusion with
5 the utmost care. I have done so, and I am unable to conclude
6 that there is sufficient justification for the non-consensual
7 third-party releases proposed in the plan. Excuse me.

8 While the debtors believe that the plan as proposed
9 cannot go forward without the non-consensual third-party
10 releases, I'll briefly address the remaining issues.

11 The litigation claimants object to the debtors'
12 release of, among others, the contribution parties. As
13 explained by Judge Carey in his 2010 Spansion decision,
14 courts may approve such releases after considering the facts
15 and equities of each case.

16 Section 1123(b)(3)(A) permits debtors to release
17 estate claims against nondebtor third parties if the release
18 is a valid exercise of the debtor's business judgment, is
19 fair, reasonable, and in the best interest of the estate.
20 While a court can use the five Master Mortgage factors as a
21 guidepost to make that determination, all need not be present
22 for a court to approve a proposed release, and they are not
23 the exclusive set of factors a court may consider in reaching
24 a decision.

25 For the reasons already described, the debtors'

1 agreement to release the nondebtor parties outlined in the
2 plan is fair, reasonable, and in the best interest of the
3 estates and is a valid exercise of their business judgment.

4 Moreover, the committee, serving as estate
5 fiduciary, supports the releases, and five of the six voting
6 classes voted overwhelmingly in favor of the plan, including
7 the debtors' releases contained therein. That is
8 unsurprising, since the plan as proposed is the only pathway
9 for a recovery to unsecured creditors and provides a home
10 run, value-maximizing transaction on account of the debtors'
11 assets in exchange for the releases, thus achieving
12 recoveries for unsecured creditors beyond what they could
13 expect in both a Chapter 7 liquidation and a non-consensual
14 Chapter 11 plan scenario.

15 The litigation creditors assert that the debtors
16 have not sufficiently satisfied the best interests test of
17 Section 1129(a)(7) because the analysis excludes the value of
18 third-party claims proposed to be non-consensually released
19 under the plan. The Court is not approving those releases.
20 But even if it was, I disagree that a valuation of released
21 third-party claims asserted against nondebtors is required
22 under the best interests test.

23 Persuasive case law, including Judge Drain's
24 decision in Purdue Pharma, explains why the plain language of
25 the Code does not require it. The Code mandates a comparison

1 between the amount objecting creditors would receive under
2 the plan on account of their claims against the debtors and
3 what they would receive on account of such claims if the
4 debtor were liquidated in a Chapter 7. That conclusion is
5 also supported by the Delaware District Court in its 2012
6 W.R. Grace decision.

7 The litigation creditors argue that the plan
8 improperly separates the Class 7 unsecured claims into two
9 subclasses. Classification of similar claims or interests
10 must be reasonable to satisfy Sections 1129(a)(1) and 1122.
11 The evidence shows that the debtors separately classified the
12 Class 7.A and 7.B claims to enable quicker distributions to
13 those creditors in Class 7.A who have mostly asserted
14 liquidated, undisputed claims, unlike a sizeable portion of
15 the litigation claimants in Class 7.B. The 7.B claims would
16 complicate and delay distributions to Class 7.A claimants if
17 the classes were combined because 7.B claims will need to be
18 reconciled and may be estimated.

19 Moreover, the record reflects that the claimants
20 placed in 7.B are those with third-party claims subject to
21 the proposed non-consensual releases. Placing them in a
22 subclass made it easier to narrow and identify the affected
23 creditors and I think, most importantly to the classification
24 analysis, gave them a voice in the proceeding.

25 If Class 7.B claimants were lumped with Class 7.A

1 creditors into one divided Class 7, it is undisputed that the
2 litigation creditors rejecting the plan would be diluted by a
3 large number of accepting voters that would carry the
4 undivided class. As such, it was reasonable and appropriate
5 for the debtors to place the 7.B claimants into their own
6 class and give them a separate voice in these proceedings.

7 Several objecting parties point out a *de minimis*
8 number of creditors who may have been misclassified between
9 Classes 7.A and 7.B. But any misclassification did not cause
10 any harm because the Class 7.B creditors rejected the plan.

11 Class 7.B has voted to reject the plan.
12 Accordingly, Section 1129(a)(8) has not been satisfied and
13 the debtors must show that the plan does not unfairly
14 discriminate and it's fair and equitable with respect to
15 Class 7.B.

16 The litigation creditors argue that the plan
17 unfairly discriminates between them and the equal priority
18 creditors of Class 7.A because the allocation of the
19 guaranteed funds for distribution to unsecured creditors was
20 done incorrectly and will result in Class 7.B receiving a
21 lower percentage recovery from the estates on account of
22 their allowed claims than those similarly situated in Class
23 7.A.

24 Moreover, they argue that creditors in Class 7.A
25 were given the opportunity to avoid the third-party releases,

1 whereas they were not. The latter point is moot given my
2 ruling today on the releases.

3 Mr. Jones' testimony reflects that, after the
4 settlement was reached and the guaranteed minimum was
5 earmarked for unsecured creditors, the debtors undertook a
6 process of reconciling the asserted unsecured claims to
7 determine a projected aggregate of likely allowed claims in
8 each Class 7 subclass to divide sufficient funds between the
9 subclasses, so that each Class 7 creditor would receive the
10 same pro rata recovery. Debtors' Exhibit 21 reflects the
11 ultimate result of that exercise with 63 percent of the
12 guaranteed minimum allocated to Class 7.A and the remaining
13 37 percent to Class B.

14 With respect to litigation claims in 7.B that are
15 disputed and unliquidated, Mr. Jones and his team, with the
16 assistance of personnel from HCN who have historically
17 overseen the debtors' claim and litigation matters, and thus
18 possess relevant knowledge regarding the subject claims,
19 analyzed the historical five-year settlement history and
20 other various factors they determined to be key markers of
21 settlement value to determine ranges of likely claim
22 recoveries. Prior judgment amounts were unavailable to
23 consider because none exist.

24 The desire and approach taken by the debtors to
25 divide the funds to ensure an equal pro rata recovery to all

1 unsecured creditors is commendable. However, for reasons
2 explored by the litigation creditors during the confirmation
3 proceedings, there is a likely chance that the debtors'
4 estimates of the total claims pool of Class 7.B will be
5 incorrect and that the percentage recoveries to allowed
6 claimants in that class will be lower than 7.A.

7 The magnitude of any such disparity, however, is
8 unknown. The estimate of aggregate 7.B claim amounts ranges
9 from the debtors' high estimate of 24.1 million to
10 approximately forty-eight -- 488.7 million, representing the
11 aggregate of scheduled claims and asserted proofs of claim
12 that have not been objected to or estimated.

13 Nonetheless, even if the magnitude was sufficient
14 shown to be material, the discrimination would not rise to a
15 level -- to an unfair level. The recoveries to creditors in
16 this case result from contributions of third parties. Absent
17 the contributions of Omega and the contribution parties,
18 Class 7.B creditors would receive no recoveries on account of
19 their claims. Accordingly, as explained by the Exide,
20 Nuverra, and Genesis Health decisions, any presumption of
21 unfairness as a result of possible material unequal
22 recoveries between creditors in Class 7.A and 7.B would be
23 rebutted.

24 In determining when a plan is proposed in good
25 faith, courts consider the totality of circumstances,

1 focusing more on the process of plan development than to the
2 context of the plan. Good faith is shown when the plan has
3 been proposed for the purpose of reorganizing the debtor,
4 preserving the value of the estate, and delivering that value
5 to creditors.

6 On the other hand, good faith has been found to be
7 lacking if the plan is proposed with ulterior motives. While
8 some of the objecting litigation creditors have argued that
9 the debtors lacked good faith in proposing the plan, that
10 objection is not sustainable given the facts adduced at trial
11 underlying the process undertaken to value estate causes of
12 action, analyze possible pathways to creditor recovery,
13 engage in substantive negotiations with key stakeholders
14 regarding a plan settlement with the assistance of an
15 experienced judicial mediator, all while facing extreme
16 liquidity constraints, and continuing to refine the
17 settlement and augment recoveries to unsecured creditors
18 embodied in the plan throughout the confirmation proceedings.

19 Circumstantial evidence relied upon by the
20 objecting parties to support an argument of bad faith,
21 including possible problems with the subclassification of
22 certain Class 7 claims, the Class 7.B vote tabulation, and
23 the assumption of certain 7.B settlements, is not
24 sufficiently persuasive to contradict the Court's conclusion
25 that the debtors acted in good faith when proposing the plan.

1 As related by the parties yesterday via joint email
2 to the Court, all but one of the remaining objections raised
3 by the U.S. Trustee in its formal objection had been
4 resolved.

5 The open objection relates to the debtors' request
6 in Article X(5) -- or excuse me -- 10(f) to serve as the
7 exclusive gatekeeper post-confirmation with respect to
8 released claims. In particular, the debtors had requested
9 that I retain sole and exclusive authority to determine
10 whether a claim or cause of action against a released party
11 arises from or is related to a debtor-released claim or a
12 third-party released claim and, in doing so, authorize such
13 party to bring the claim against the relevant release party.

14 I will sustain the U.S. Trustee's objection on this
15 point. I see no reason to retain exclusive jurisdiction for
16 a determination that has been requested of me. The
17 confirmation order says what it says, and the other courts
18 should be entitled to -- or excuse me -- the plan says what
19 it says, and other courts should be entitled to exercise
20 their authority to interpret it.

21 Imposing such a requirement could also impose an
22 unnecessary administrative hurdle and cost the parties when
23 these cases are closed.

24 That takes us to the last objection regarding the
25 trust procedures and trustee identification. The litigation

1 creditors objected to the debtors' litigation claims
2 procedures and the identity of the litigation claims trustee,
3 as set forth in the plan supplement. The debtors wish to
4 resolve the objections with the litigation claimants.

5 Given that it's unclear whether the plan will move
6 forward in these cases; and, if so, what form it will take, I
7 will not address these issues as they are not ripe.

8 For similar reasons, the Court -- myself -- has
9 not reviewed the debtors' revised proposed confirmation
10 order, but will do so, if appropriate, at a future time.

11 To the extent that the parties raise other
12 objections to confirmation of the plan that I have not
13 specifically addressed, they are overruled.

14 The plan, the evidence adduced in favor of
15 confirmation and the legal briefing support the conclusion
16 that the debtors have met all other confirmation requirements
17 of the Code, including those of Section 1122, 1123, and 1129,
18 and would be entitled to approval of their plan absent the
19 non-consensual third-party releases.

20 Thank you for enduring that lengthy oral ruling. I
21 know that this is a lot of information for the parties to
22 process, and you may not have an understanding of how you
23 wish to move forward. I guess I would suggest to the
24 parties, if they would like it, I'm happy to put a date on
25 the calendar in the near future for a status conference, or

1 you could reach out to my chambers and let me know whether
2 that would be something that the parties are interested in
3 doing.

4 MR. SIMON: Thank you, Your Honor.

5 THE COURT: Mr. Simon.

6 MR. SIMON: Thank you, Your Honor. Obviously it's
7 a lot to digest. So perhaps we should convene with the
8 parties and come back to you as -- in connection with next
9 steps, and we'll reach out accordingly.

10 THE COURT: Okay. I have some time next week, so,
11 if you want to save any of that time or reserve any of that
12 time --

13 MR. SIMON: Sure.

14 THE COURT: -- just email Ms. Lopez and she will
15 get it on the calendar.

16 MR. SIMON: Okay.

17 THE COURT: Okay.

18 MR. SIMON: Thank you, Your Honor. We appreciate
19 that.

20 THE COURT: All right. Thank you all very much.
21 And I apologize, for some reason, my throat was acting up the
22 moment I took the bench today. So, hopefully, you were able
23 to hear and understand that ruling.

24 And unless there's anything further, we will
25 adjourn for the day.

1 Mr. McNeill, I see that you're on the line. Is
2 there anything that we need to talk about?

3 MR. MCNEILL: No, Your Honor. I just was putting
4 my face on the screen to thank Your Honor for your ruling.

5 THE COURT: Okay. Thank you, all, very much. I
6 look forward to hearing from you all in the near future. We
7 can consider this hearing adjourned. Take care. Have a good
8 night.

9 COUNSEL: Thank you, Your Honor. Thank you.

10 (Proceedings concluded at 4:04 p.m.)

11 *****

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

A handwritten signature in cursive script, appearing to read "Coleen Rand", is written over a horizontal line.

May 4, 2022

Coleen Rand, AAERT Cert. No. 341

Certified Court Transcriptionist

For Reliable

CERTIFICATE OF SERVICE

I, Hannah McCollum, hereby certify that on October 3, 2025, I caused to be served a copy of this Objection by electronic service on the registered parties via the Court's CM/ECF system and courtesy copies were sent via email to parties in interest.

Dated: October 3, 2025

/s/ Hannah McCollum

Hannah McCollum